

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE V.KANAGARAJ

H.C.P.No.2106 of 2002

N.Vijaya ... Petitioner

-Vs-

1.State of Tamil Nadu
rep.by the Secretary
Prohibition & Excise Department
Fort St.George, Chennai-9.

2.The Commissioner of Police
Chennai City ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of Habeas Corpus, calling for the records relating to the detention order in B.D.F.G.I.S.No.697/2002 dated 05.06.2002 passed by the second respondent under Tamil Nadu Act 14 of 1982 and quash the same and direct the respondent to produce the detenu before this Hon'ble Court and set him at liberty.

!For Petitioner : Mr.P.Kumaresan

^For Respondents: Mr.A.Navaneethakrishnan
Additional Public Prosecutor

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

The challenge is to the order dated 05.06.2002 passed by the Commissioner of Police, Chennai City, branding one Nagarajan as a Goonda and ordering his detention under the provisions of Section 3 of the Tamil Nadu Act 14 of 1982.

2. Learned counsel for the petitioner presses only one point. Learned counsel points out that after the detenu was served with the order of detention on 7.6.2002 and the grounds of detention on 11.6.2002, he sent a representation dated 20.06.2002 to the Commissioner of Police, i.e., the concerned authority. The Commissioner has accepted this and intimated to him

that he did not have the power to consider the representation because in the meantime, the Government had approved the said detention. However, the Commissioner informed him by a letter dated 22.6.2002 that his representation had been forwarded to the Government. Learned counsel says that thereafter the Government has not decided that representation at all and till today also, he does not know as to what has happened to that representation.

3. This, in our opinion, is a good ground to hold that an important right of the detenu under Article 22(5) of the Constitution of India, of the expeditious consideration of the representation, has been blatantly breached. When we asked the Additional Public Prosecutor as to what has happened to that representation, the learned Additional Public Prosecutor only argued that it was up to the Government to decide that representation, because it was made to the Commissioner of Police. We fail to follow this logic. A representation made to the Commissioner of Police, who is the detaining authority, is a representation conceived by the provisions of Article 22(5) of the Constitution of India and if the said representation was forwarded to the Government, that Government was duty bound to consider the same in good time. The Government not having done so, the right of the detenu has been breached and his representation has been rendered illegal. The learned Additional Public Prosecutor further said that the detenu had sent another representation dated 18.7.2002, which was disposed of by the Government on 9.8.2002. That will be of no consequence, because admittedly the first representation has not been considered by the Government even till today.

4. In that view, the petition is allowed and the further detention of the detenu is quashed. The detenu Nagarajan is directed to be set at liberty forthwith, unless he is required in connection with any other case.

Index : Yes

Internet : Yes

kst.

To:

- 1.The Commissioner of Police,
Chennai City, Chennai
- 2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai.
- 3.The Superintendent, Central Prison,
Chennai.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.
- 5.The Public Prosecutor, High Court,
Chennai-104.

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